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Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law

Letter dated 27 July 2010 from the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General

Upon instructions of my Government, I have the honour to forward herewith the position of the Republic of Serbia concerning the advisory opinion entitled "Accordance with international law of the unilateral declaration of independence in respect of Kosovo", rendered by the International Court of Justice on 22 July 2010 (see annex).

I would be grateful if you would have the present letter and its annex circulated as a document of the sixty-fourth session of the General Assembly under agenda item 77.

(*Signed*) Feodor **Starcevic**
Ambassador
Permanent Representative

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Annex to the letter dated 27 July 2010 from the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General

Position of the Republic of Serbia concerning the advisory opinion entitled "Accordance with international law of the unilateral declaration of independence in respect of Kosovo", rendered by the International Court of Justice on 22 July 2010

In accordance with Article 96 of the Charter of the United Nations, the General Assembly, by its resolution 63/3 of 8 October 2008, requested the International Court of Justice to render an advisory opinion on the following question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"

Following its established procedure, the International Court of Justice rendered its opinion on the issue on 22 July 2010. The position of the Republic of Serbia in regard to this opinion is as follows:

- In its opinion, the Court applied a narrow approach as to the scope of the question put to it. As a consequence, the findings in this opinion neither endorse Pristina's claim that the province of Kosovo is a state, nor the view that Kosovo's unilateral declaration of independence is a unique case. Moreover, the Court did not affirm the right of the province of Kosovo to secession from the Republic of Serbia. The Court affirmed as well that its advisory opinion does not deal with the legal consequences of the unilateral declaration of independence and that it does not address the validity of the legal effects of the recognition of Kosovo by the third States, as stated in paragraph 51 of the Court's opinion. This was a reasoning of the Court which made it possible to say that the text of the declaration itself did not violate international law.

- Contrary to the overwhelming evidence presented before it, not only by Serbia but also by the Secretary-General, the Court refrained from recognizing that the authors of the unilateral declaration of independence were the Provisional Institutions of Self-Government of Kosovo. The Court endorsed the plea that it was adopted by "persons who acted together in their capacity as representatives of the people of Kosovo". That approach creates a dangerous precedent, since separatist regions or movements throughout the world could always declare to act on behalf of a part of the population of the territory in question, avoiding any legal analysis of their competencies to do so, thus creating harmful consequences for the contemporary international order.

- The Court clearly affirmed that the status of Kosovo has not yet been resolved, stating that its unilateral declaration of independence "is an attempt to determine finally the status of Kosovo". This means that the Court found that "a political process designed to determine Kosovo's future status", envisaged in paragraph 11 (e) of Security Council resolution 1244 (1999), has not run its course.

- It is clear that the Court reaffirmed that both Security Council resolution 1244 (1999) and the Constitutional Framework of Kosovo promulgated by the

Special Representative of the Secretary-General are in force and continue to apply. This also applies to the Special Representative of the Secretary-General, who continues to exercise his functions in Kosovo (see paras. 91 and 92 of the advisory opinion).With this in mind, it is clear that the province of Kosovo remains a territory subject to an international regime, whose final status is undetermined. It is therefore not an independent sovereign state.

- Proceeding from this, the Court affirmed that the General Assembly has a legitimate interest in discussing this issue and its possible consequences. This means that the matter is not closed but is subject to further consideration by the General Assembly, which requested the advisory opinion (as is stated in paras. 40 and 44 of the advisory opinion). The process before the General Assembly should therefore not be prejudged by any further recognitions, which, by definition, infringe on the territorial integrity and sovereignty of a Member State of the United Nations, namely of the Republic of Serbia.

- The Republic of Serbia believes that the forthcoming debate in the General Assembly should focus on the consequences and implications of Kosovo's unilateral declaration of independence for the international system. In this regard, the Republic of Serbia has submitted a draft resolution to the General Assembly under agenda item 77 of the sixty-fourth session of the General Assembly, entitled "Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law".

- It is our profound belief that unilateral attempts at secession must never be automatically recognized. The only way to deal with them is to endeavour to reach a mutually acceptable solution through peaceful dialogue. Such a solution, if reached, avoids setting a dangerous precedent that would, for the first time in the history of the United Nations, legitimize secessionism in the international community.

- For the above reasons, it can be concluded that the main issues arising from the unilateral declaration of independence of 17 February 2008 remain unanswered after the rendering of the advisory opinion on 22 July 2010.